

ANALYSIS OF AMENDED BILL

Author: Laird Analyst: Darrine Distefano Bill Number: AB 2638
 Related Bills: See Legislative History Telephone: 845-4142 Amended Date: August 21, 2006
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT:

Low-Income Housing Credit/ "At Risk Of Conversion" /Deletes Requirement That Property Be Ineligible For Allocation Of Tax Exempt Private Activity Mortgage Revenue Bonds

SUMMARY

This bill would modify two of the elements for qualifying property under the state low-income housing tax credit.

This analysis will address only the changes made to the Personal Income Tax and Corporation Tax provisions of the Revenue and Taxation Code.

SUMMARY OF AMENDMENTS

The amendments of August 10th and 21st, 2006, added the provisions modifying the state low-income housing credit.

This is the department's first analysis of the bill.

PURPOSE OF THE BILL

It appears that the purpose of this bill is to make changes to the Local Housing Trust Fund Matching Grant Program and technical amendments under the Revenue and Taxation Code to resolve non-controversial housing-related items.

EFFECTIVE/OPERATIVE DATE

As an urgency statute, this bill would be effective and operative for taxable years beginning on or after January 1, 2006.

POSITION

Pending.

Board Position:

_____ S	_____ NA	_____ NP
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_____ N	_____ OUA	_____ X PENDING

Department Director

Selvi Stanislaus

Date

8/29/06

ANALYSIS

FEDERAL/STATE LAW

Current federal law allows a low-income housing tax credit to owners of residential rental buildings for the costs of constructing, rehabilitating, or acquiring low-income housing. Credits can also be allocated to new construction projects or existing properties undergoing rehabilitation. The credit is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building. The applicable percentage is either 9 percent for new buildings that do not receive a federal subsidy, or 4 percent for new buildings that receive a federal subsidy and existing buildings. In order to claim the credit on a building, the owner must receive an allocation from a housing credit agency. The California Tax Credit Allocation Committee (TCAC) has the authority to oversee the process and allocate the credit within the state. Taxpayers that utilize the tax credit must own the project for which the credits are awarded. The federal credit is claimed over 10 years.

Current state Personal Income Tax Law (PITL) and Corporation Tax Law (CTL) conform to federal law, except that the state low-income housing credit is claimed over four years, is limited to projects located in California, and is applied with a modified percentage as follows:

- For a low-income building placed in service during 1987, the percentage is 9 percent of the basis for the first three years and 3 percent in the fourth year for new (whether federally subsidized or not) and existing buildings.
- For a new low-income building that is not federally subsidized and receives an allocation after 1989, the percentage for each of the first three years is set by the Secretary of the Treasury for the earlier of either:
 - the month in which the building is placed in service, or
 - at the election of the taxpayer for either:
 - the month an agreement is entered into with TCAC, or
 - 50 percent or more of the building is financed with tax-exempt bonds.

In the fourth year, the percentage is the difference between 30 percent and the sum of the percentages taken over the three years.

- For a new low-income building that is federally subsidized or is an existing building “at risk of conversion” and receives an allocation after 1989, the percentage for the first three years is set by the Secretary of the Treasury and in the fourth year the percentage is the difference between 13 percent and the sum of the percentages taken over the first three years.

Under state law, the program defines “at risk of conversion” to mean an existing property that meets all of the following criteria:

- The property is a multifamily rental housing development where at least 50 percent of the units receive governmental assistance pursuant to any of the following:
 - Section 8 of the United States Housing Act of 1937.
 - The Below-Market-Interest-Rate Program.
 - Section 236 of the National Housing Act.

- Rent supplement assistance programs pursuant to Section 101 of the Housing and Urban Development Act of 1965.
- Section 515 of the Housing Act of 1949.
- Low-income housing credit program under Section 42 of the Internal Revenue Code (IRC) provided that the property is ineligible to receive an allocation of tax exempt private activity mortgage revenue bonds from the California Debt Limit Allocation Committee (CDLAC).
- The restrictions on rent and income levels will terminate or the federal insured mortgage on the property is eligible for prepayment anytime in the five calendar years after the year of application to the TCAC.
- The entity acquiring the property enters into a regulatory agreement that requires the property to be operated in accordance with the requirements of the law for a period equal to the greater of 55 years or the life of the property.
- The property satisfies the requirements of the IRC for rehabilitation expenditures, except the provisions regarding the expenditures for adjusted basis of a building are not applicable.

Under federal and state law, an allocation is not required when either 50% or more of the aggregate basis of the building and the land is financed with certain tax-exempt bonds issued after 1989 for buildings placed in service that year, or 70% or more of the aggregate basis of the building and land is financed with certain tax-exempt bonds issued before 1990.

The CDLAC administers the tax-exempt private activity bond program available annually for California. Agencies and organizations authorized to issue tax-exempt private activity bonds or mortgage credit certificates must receive an allocation from CDLAC. These bonds assist developers of multifamily rental housing units to acquire land and construct new units or purchase and rehabilitate existing units. Projects that receive an award of bond authority have the right to apply for the 4 percent low-income housing credit through TCAC.

THIS BILL

This bill would modify the criteria under the PITL and CTL for property “at risk of conversion” so that a property with units that receive government assistance pursuant to the federal low income housing tax credit could be considered in satisfying the 50 percent threshold even if the property is eligible to receive an allocation of tax-exempt private activity mortgage revenue bonds from the CDLAC.

This bill would also modify the timeframe on rent levels and federal insured mortgages for property “at risk of conversion.” For property with restrictions on rent and income levels, those restrictions would terminate within the five years before or after the date of application to TCAC. For property with a federally insured mortgage, that mortgage can be prepaid anytime within the five years before or after the date of application to TCAC.

IMPLEMENTATION CONSIDERATIONS

Implementation of this bill would not significantly impact the department’s programs and operations.

LEGISLATIVE HISTORY

SB 286 (Lowenthal, 2005-06) is identical to this bill. SB 286 is currently on the Assembly Floor.

SB 950 (Torlakson, Stat. 2005, Ch. 501) revised the meaning of an "at risk of conversion" building for purposes of the low-income housing credit.

SB 565 (Migden, Stat. 2005, Ch. 416) would have revised the percentage of the low-income housing tax credit that is set aside for small developments from 2% to 5%. This provision was amended out of the bill. The bill was amended and chaptered to exclude from the definition "change in ownership" any transfer of property between registered domestic partners.

AB 644 (Mullin, 2003/04) would have added additional criteria of projects that provide child care for TCAC to consider when allocating low-income housing credits. AB 644 failed to pass out of the house of origin by the second year of the legislative session.

SB 73 (Dunn, Stats. 2001, Ch. 668) increased the aggregate allocation amount for the low-income housing credit to \$70 million for each calendar year after 2001.

AB 1626 (Torklason & Migden, Stats. 2000, Ch. 3) increased the aggregate allocation amount for the low-income housing credit to \$50 million for each calendar year after 1999.

AB 97 (Torklason, Stats. 1999, Ch. 983) provided that the chapter authorizing TCAC to allocate the credit would remain in effect as long as the federal low-income housing credit is in effect.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Because the total amount of credits available for allocation remains unchanged, this bill would not be expected to have an impact on state income tax revenues.

LEGISLATIVE STAFF CONTACT

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